IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 166 OF 2000

Pimpri Chinchwad New Town)
Development Authority,)
Nigadi, Pune 411 037 .....). Petitioner.

versus

1. The State of Maharashtra)
2. The Additional Commissioner,)
Pune Division, Pune.)
3. Bajirao Baburao Kalbhor)
r/o at Post nigadi,Pune)
4. Dattatraya Baburao Kalbhor)
64/4 MIDC Chinchwad, Pune)
5. Rge Principal Secretary)
Revenue & Forest Dept.)
Mantralaya, Bombay.)... Respondents.

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Shri C.J.Sawant Sr. counsel with Shri Vijay Patil for the petitioner.
Mrs. J.S.Pawar AGP for the State - Respondent nos. 1, 2 and 5.
Mrs. Archana B. Kololgi for Shri N.V.Veechalekar for Respondent no.3.
Dr. A.K. Barthakur with Shri Aditya Barthakur for Respondent no.4.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 11TH JANUARY, 2005.

ORAL JUDGMENT; (Per Palshikar, J.):

1. By this petition, the petitioners have challenged the order dated 1-11-1999 passed by the Commissioner and consequently corrections made in the revenue record

by the order dated 13-12-1999. The facts giving rise to this petition stated briefly are as under:

2. That the respondents 3 and 4 were owners of certain pieces of land which came to be acquired by due process of law, taken under the provisions of the Land Acquisition Act of 1894 (hereinafter referred to as the Act). The compensation as determined by the award dated 2-8-1977 was paid and accepted by the respondents 3 and 4. Possession was taken as will be reflected from the various revenue records. This fact was accepted by the respondent also and nothing was done in the matter for several years.

3. It was only in the year 1996, to be precised on 22-7-1996, that the respondents 3 and 4 filed an application before the Commissioner, Pune Division, Pune, praying that the entries in Revenue Records be corrected that show the land to be in possession of the acquiring body and declare that the acquiring body has no right to the possession under the provisions of the M.R.T.P. Act. This was, therefore, not an application under section 48(1) of the Act. However on 3-9-1999 a reply was filed before the Commissioner on behalf of the Chief Executive Officer of the acquiring body i,e, Pimpri Chinchwad New Town Development Authority,

pointing out that the application under section 48 is not maintainable as there was delay of 22 years, that the land acquisition proceedings cannot be quashed after such a delay. It was also contended that the Commissioner has no power to quash the acquisition proceedings under section 48 of the Act and in fact provisions of section 48 cannot be invoked as possession was taken by the petitioner authority on 18-8-1977, which renders section 48 totally inapplicable.

4. However inspite of this reply, the Commissioner proceeded to decide this matter by his order dated 1-11-1999 thereby he held that since possession is not factually taken, section 48 can be invoked and he therefore proceeded to invoke and dropped survey numbers belonging to respondents 3 and 4 from the acquisition proceedings. As a consequence thereof the order dated 13-12-1999 was passed correcting entries in the revenue record. These two orders are challenged in this petition by the authority on the grounds mentioned in the petition as also verbally canvassed before us.

The grounds raised are:

1) Section 48 is not applicable in the present case.

2) There was never an application under section 48 of the Act.

3) Possession of the land was taken.

Even if application for correction of records is treated as one under section 48, no orders could be made under that provision as physical possession of that land was taken way back in 1977.

5. The learned counsel on behalf of the respondent no.4 has submitted written submissions and the learned counsel for respondent no.3 has adopted the same. This also contained by countering submissions made by the counsel for the petitioner.

1) Physical possession was never taken.
2) Paper possession cannot divert under section 48 by the Commissioner or his authority.
3) Even though the application does not invoke provisions of section 48 specifically, and lack of mentioning that section in the cause title cannot be fatal to the prosecution.

It is also contended by way of written submissions that the facts as narrated in the submissions give raise to two questions which are framed as under:

1. Whether the Collector is competent to take possession of the acquired land under section 16 of the LA Act after awarding a nominal compensation of Rs. 1/- in respect of the acquired land ?

2. The question whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the respondents 3 and 4 being continuously in possession of the property perfectedtheir title by adverse possession must not be decided in a properly constituted suit ?

Both these questions, questioning the correctness of the entire acquisition proceedings on the ground that there was no acquisition, delivery of possession, and compensation as contemplated by the Act was not paid. A writ petition for such prayers would also not be maintained after 19 years of the acquisition. Apart from that the factual possession physical in nature is taken by the petitioner and consequently there is no question of perfection of title by adverse possession. The land absolutely vests in the State and the title

cannot therefore be perfected by adverse possession. Assuming that it is possible the remedy for the respondents 3 and 4, in the circumstances, would be to initiate independent proceedings for these prayers. It is a settled position in law that an order impugned can be defended on the ground not mentioned in the order itself but that is permissible only for defending an order. The respondents are trying to question the entire acquisition proceedings after a period of 19 years are lapsed. The submissions made therefore pertains to these two questions. We are emphatically of the opinion that such questions cannot be raised by way of a reply or written submission in a petition substantially filed by the petitioner.

6. We have to consider these contentions therefore, in the light of the factual situation as disclosed by the record.

7. Section 48 of the Land Acquisition Act 1894 reads as under:

48. Completion of acquisition not compulsory but compensation to be awarded when not completed.

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

8. This provision therefore empowers the State Government or gives the State Government liberty to withdraw from the acquisition, any land of which possession has not been taken. In every case for

invoking this provision, the basic requirement therefore is that possession of that land has not been taken. The question as to whether the possession has been or has not been taken is always a question of fact. From the very application of the petitioner filed in the year 1996, it is obvious that for a period of 19 long years from 1977 to 1996, the land was recorded in the name of the petitioner as acquired under the Land Acquisition Act. There is no mention whatever, in the application, which is at Exh.F explaining how the respondents 3 and 4 who were applicants, are in physical possession of the land in question. Whereas the reply filed by the petitioner categorically points out how the land is in physical possession of the petitioner from 18-8-1977.

9. In fact the provisions of section 48 as pointed out above, pre-suppose that acquisition is complete and legal, it is also accepted as binding on the persons against whom it is made. It empowers the State, may be on an application of persons whose land was acquired to withdraw from acquisition of any land of which possession has not been taken. In this case the respondents 3 and 4 are questioning the correctness of the acquisition proceedings itself, in which case there is no question of application of section 48. The

proper remedy for respondents 3 and 4 in the circumstances, may be a suit for declaration and for possession.

10. Another aspect which is liable to be noticed is that the total holdings of the respondents 3 and 4 were much more. They had prepared a development plan of their holdings of plots and the plots have already sold and therefore at the time when the acquisition proceedings were completed in the year 1977 the plot holders were the persons who were entitled to get compensation and have been given compensation. The land, exclusion of which is sought by the respondents 3 and 4 by their application of July 1996 is the land covered by proposed roads and vacant sites described in the development plan, which was sanctioned years ago. Those vacant lands were required to be shown as vacant, where building development etc. has to be done in accordance with the sanctioned map and the sanctioning authority was the Pimpri Chinchwad Municipal Corporation or the petitioner. After the award was made and compensation was paid to various occupants, possession of those lands have been taken, the lands were developed and after accepting development charges from those plot holders, the developed plots were given back to them. The Respondents 3 and 4 have themselves

acknowledged this aspect in their application dated 22-7-1996. The Respondents 3 and 4 have further submitted in that application (Exh.F) that they (Respondents 3 and 4) are also willing to pay the development charges. The contentions of the Respondents 3 and 4 that they are in possession only of that land, which was earmarked as land for construction of roads etc. by development is on the face of it unacceptable because that is something which was required to be made as part of development which was never done by the Respondents 3 and 4 and was done by petitioner. The entire land acquisition was completed when award under section 12 of the Act was passed and compensation was paid and possession was taken by the petitioner. By no stretch of imagination therefore it can be held that it is a case where provisions of section 48 are attracted.

11. The question of adequacy of compensation or factual delivery of acquisition possession are germane for acquisition proceedings. They cannot now be raised after 19 years and more and they certainly cannot be raised by way of a reply to a writ petition filed by the acquiring authority. Infact the averments in Exh.F clearly prove that development was to be done by petitioner. In either case, the contentions are

baseless. The factual possession has been taken and therefore section 48 cannot apply. We have already observed above, that for invoking powers under section 48, two things must exist. (I) acceptance of the award and (II) inspite of the award, no delivery of possession, whereas the Respondents 3 and 4 contend that the acquisition itself was nullity or was liable to be struck down or was illegal, they cannot take resort to section 48 which pre-supposes the acceptance of acquisition by acquiring authority.

12. Apart from the fact that factual possession has been taken is our finding, the question of delay in filing that application under section 48, assuming that that section applies after 19 years without explanation of delay, itself is fatal. Proper application under section 48 was not made within 19 years, and it is not explained anywhere how the possession was with the petitioner when possession was given to plot holders and merely because the respondents 3 and 4 have ignored to develop the land by developing the roads, probably because the acquisition was pending in accordance with the sanctioned plan and the fact therefore that there has been acquisition proceedings and that the proceedings culminated in an award under section 12 and that possession has been taken from various plot

owners, who bought the land and compensation has been received by everyone, and that the compensation was proper. If the petitioner was in any manner dis-satisfied by such award, it was open for the petitioner to make an application under section 18 of the land acquisition Act within the time stipulated therein, which is about 60 days. The respondent has lost not only six years, but 18 years or more before taking recourse to section 48.

13. Reliance was placed on several judgments of this Court and the Supreme Court of India to contend that physical possession must be proved and what is contemplated by acquisition proceedings is factual physical possession of the land acquired. In our opinion, the fact that all the plot holders have handed over the possession to the petitioner and the petitioner has after development accepted the charges for it and gave back the developed plot to the plot owner. That is why no complaint was made by any of them regarding acquisition proceedings, the fact that compensation has been received by them, the fact that the respondents 3 and 4 have kept quiet for 19 years, the fact that they claimed only mutation in the revenue records, all prove beyond reasonable doubt that the possession physical in nature was taken by the

petitioner, all those judgments are therefore of no assistance to the respondents 3 and 4. Apart from the factual aspect and finding that we have arrived at, all the judgments of the Supreme Court of India cited before us in relation to (1) the manner in which physical possession is to be taken, (2) dispute of title to be decided in Civil Court and (3) paper possession not enough under section 16 of the Land Acquisition Act, our finding and the discussion above, in the matter of possession is after taking into consideration the judgments of the Supreme Court of India in regard to physical possession. In so far as the question of title is concerned, it was for the Respondents 3 and 4 to approach the Civil Court for declaration that the award is nullity, that they are in physical possession and therefore the proceedings are liable to be quashed on the basis of their title and possession. They cannot claim such relief in a writ petition filed by the acquiring body, namely the present petitioner. For all these reasons, we are of the opinion that none of the judgments cited at the bar and mentioned in the written statement are of any use to the petitioner.

14. In the result therefore, the petition must succeed and is allowed. Orders dated 1-11-1999 and 13-12-1999

are quashed and set aside. It is also declared that the land always vested with the petitioners on successful completion of legal proceedings under the Land Acquisition Act. Rule made absolute in these terms. There shall be no orders as to costs.

15. After the operative part of the judgment was pronounced, request was made for suspending the operation of this judgment for a period of four weeks. We declined that request as no question of constitutional interpretation and importance is raised in this petition. The question as to whether after acquisition possession was taken or not is a pure question of fact and we have found it as a fact that after acquisition, physical possession was taken by the petitioner. In such circumstances, there is no question of staying the operation of this order. The request was therefore rejected.

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